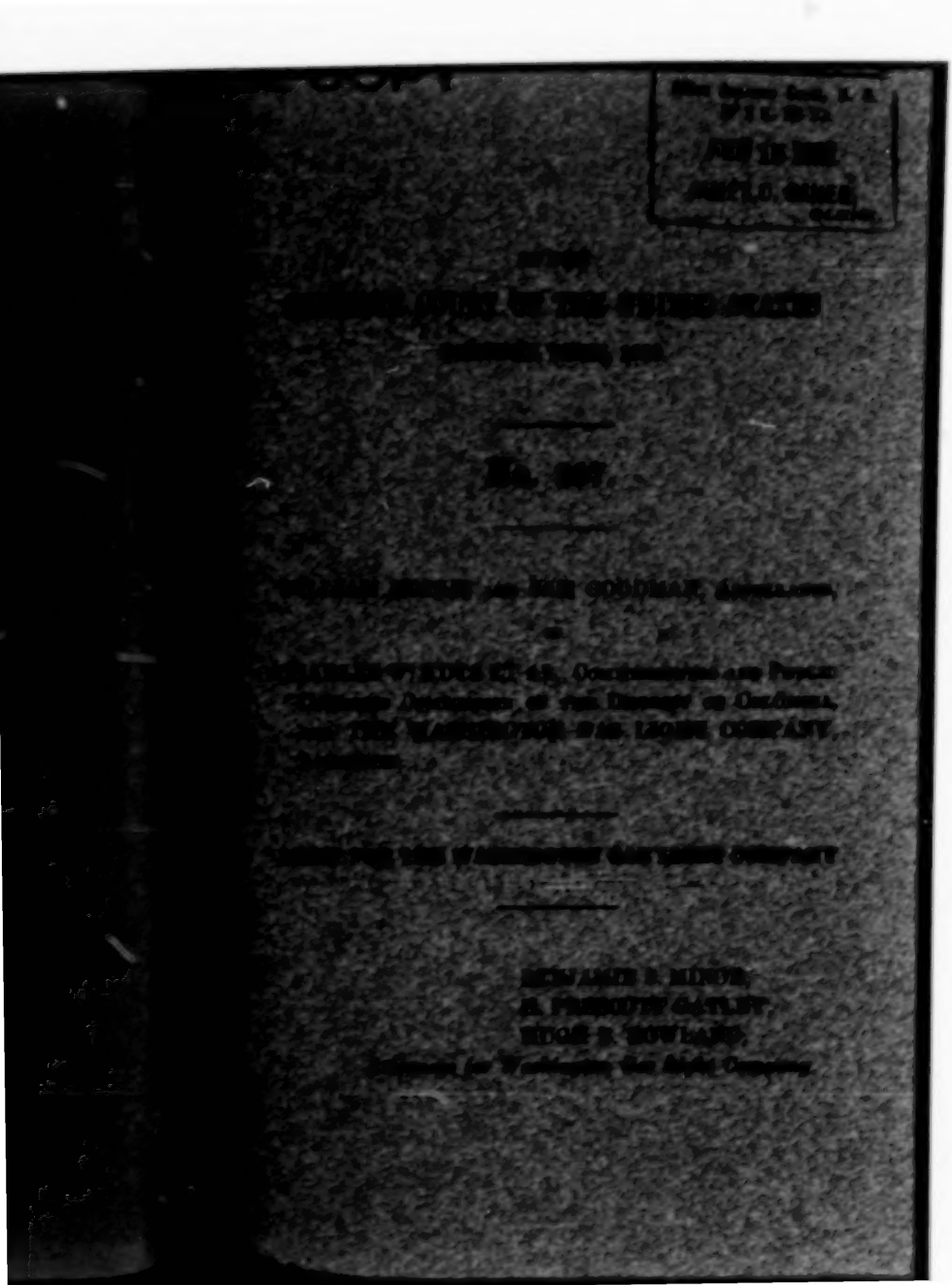

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IN THE

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1920.**

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## No. 397.

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WILLIAM HOLLIS AND SAM GOODMAN, APPELLANTS,

*vs.*

CHARLES W. KUTZ ET AL., COMMISSIONERS AND PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA, AND THE WASHINGTON GAS LIGHT COMPANY, APPELLEES.

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## BRIEF FOR THE WASHINGTON GAS LIGHT COMPANY

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### Statement.

Section 8 of the Appropriation Act of the District of Columbia for the year ending June 30, 1914, approved March 4, 1913 (37 Stat., 974), which section constitutes and is commonly referred to as the Public Utilities Act of the District of Columbia, provides, in paragraph 41, that if,

upon the investigation thereof authorized by paragraphs 38, 39, 40 and 47, the rates and charges of a public utility be found by the Public Utilities Commission unjust, unreasonable or insufficient, it shall have power by its order to substitute therefor such rates and charges as shall be just and reasonable. Paragraphs 46 and 94 provide for the giving of notice by the Commission to the public utility and other interested persons or parties of the time and place of the hearing; while paragraph 64 gives to any public utility, person or corporation interested and who is dissatisfied with the order or decision of the Commission, the right to bring suit in equity in the Supreme Court of the District to vacate, set aside or modify the rates or charges, etc., allowed by the Commission, the right to bring such proceeding being limited (paragraph 65) to 120 days from the entry of the order, and to terminate absolutely at the end of that period.

The bill of the appellants, in paragraphs 7 to 11, inclusive, alleges that in a proceeding before it of the character above indicated, known as Formal Case No. 13, the Commission on March 15, 1918, made an order increasing the rate to be charged for gas to private consumers in the District of Columbia from seventy-five cents to ninety cents per thousand cubic feet. In paragraphs 12 to 16 it alleges that in a subsequent proceeding, known as Formal Case No. 70, the Commission, on March 15, 1919, made an order further increasing the price of gas to private consumers to ninety-five cents per thousand cubic feet. A decree setting aside each of these orders, and requiring the Gas Light Company to refund to the plaintiffs the difference between the rates prescribed by them and the statutory rate of seventy-five cents per thousand cubic feet theretofore prevailing, with

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interest, and for such further relief as the nature of the case may require, was sought by the bill.

**The Delay in Bringing Suit Fatal.**

The bill was filed May 15, 1919, or fourteen months after the order of the Commission in Formal Case No. 13, although in its seventh paragraph it sets forth that the suit is brought under and by virtue of paragraph 64 of section 8 of the act of March 4, 1913, which act, as stated, requires the suit to be brought within 120 days from the passage of the order complained of and not thereafter.

In an effort to escape the limitation prescribed by the statute upon the period within which the order of the Commission may be attacked, the plaintiffs, on July 8, 1919, after the cause had been argued and decided, amended their bill by the allegation that their suit was instituted "both because they were without any adequate remedy at law, and because paragraph 64 of section 8 of said act of March 4, 1913, creating a Public Utilities Commission of the District of Columbia, expressly provides that any person interested and being dissatisfied with any order or decision of the said Commission fixing any rate or rates, tolls or charges, may commence a proceeding in equity in this Honorable Court against said Commission to vacate or set aside any such decision or order, on the ground that such rate or rates, tolls or charges, complained of fixed in such order is unlawful or unreasonable." This amendment simply adds the additional defect of converting the bill into one with a double aspect, a plaintiff suing under the Public Utilities Act being entitled to a procedure and relief materially different from one suing

only under the general jurisdiction of equity on the ground of the absence of an adequate remedy at law. The theory of the plaintiffs' bill as amended, for example, that, suing under the Public Utilities Act, they may require the Commissioners to furnish them free of cost with a certified transcript of all the proceedings had and testimony taken in the hearing before them, and, when confronted by the objection that their bill was filed nearly a year after the expiration of the time within which the bringing of such suit is limited by the act, that they are also suing under the general jurisdiction of equity because of the absence of an adequate remedy at law, involves an inadmissible departure in pleading and a non-permissible position before any court.

At pages 37-43 of appellants' brief, it is contended that statutes of limitation are inapplicable, and are themselves unconstitutional, where suit is based upon the alleged unconstitutionality of a statute or act. If the plaintiffs, at the expiration of nearly a year after the termination of the time limited by the act for the filing of such suit, may nevertheless bring it by raising a constitutional question, they may equally do so at the expiration of ten, twenty, or any other number of years, and this will be true not only in the present case, but in every other suit or action, otherwise barred by statutes of limitations, but in which the plaintiffs attempt to raise questions of that character. The view of the Supreme Court of Louisiana in Crow *vs.* Supervisors, 141 La., 1017, quoted at page 43 of the brief, we submit, states the unquestionable doctrine; namely, that, while the law-maker must recognize the right of the owners of property to raise all legal and constitutional objections to a measure which they may think proper, it may nevertheless be declared that "the right so

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recognized must be exercised in time and not throughout eternity."

Moreover, since it is a rule of courts of equity to follow the analogy of the Statutes of Limitation in the particular case, it is difficult to see how plaintiffs may wait nearly a year beyond that period, in a matter of public importance like that under consideration and in which delay every month's delay must necessary tend to involve inextricable complication and difficulty, since, if the order was invalid, every consumer of gas in the District of Columbia would be entitled to the same ratio of refund and interest, the plaintiffs could escape dismissal of their bill on the ground of laches, unaccompanied, as it is, either in the record or in the brief, by any attempt either to explain or to justify their delay. Courts of equity, in the absence of fraud, concealment, or other special equities, do not entertain suits after the period at which action at law is precluded by the Statute of Limitations; and, where such special equities are relied upon, the burden of proof as to them rests upon the plaintiff (Kelly *vs.* Boetcher, 85 Fed., 55). A delay of even less than the prescribed period of limitation, unexplained, has in many cases led to dismissal of the bill (Shickler *vs.* Washington Brewery Co., 33 App. D. C., 35-45; Abrahams *vs.* Ordway, 158 U. S., 416, 422; Grymes *vs.* Saunders, 93 U. S., 51-55; Harwood *vs.* Railroad Company, 17 Wall., 78; Mackall *vs.* Richards, 124 U. S., 183).

**The Alleged Service to the Government at Less Than the Statutory Rate.**

At pages 5 and 45 and elsewhere in appellants' brief it is erroneously stated that the Gas Company furnishes gas to

the United States, the District of Columbia, and others, not private consumers, at a rate below the statutory rate of seventy cents prescribed by the act of September 1, 1916 (39 Stat., 716). This error is due to the inadvertence of failing to observe that the seventy-cent rate is prescribed by said act only with respect to gas furnished for use in any of the public buildings. The seventy-cent rate fixed by the act of September 1, 1916, is substantially a re-enactment, as permanent legislation, of a like provision fixing a seventy-cent rate for gas furnished for use in the public buildings of the United States and of the District of Columbia contained in the District of Columbia Appropriation Acts, approved July 21, 1914, and March 3, 1915, and all subsequent in date to the passage of the Public Utilities Act. The provisions of the acts of 1914 and 1915 refer to the appropriations respectively made thereby, while in the act of September 1, 1916, it is provided "*that hereafter* no part of any money appropriated by this *or any other act*, shall be used," etc. (Italics ours.)

By far the greater part of the gas furnished the United States and the District of Columbia is used for lighting the streets, avenues, roads, alleys, and public spaces, the compensation for which is annually fixed by Congress, beginning in 1910, at a flat rate per annum per lamp, which rate amounts to materially less than seventy cents per thousand cubic feet (36 Stat., pp. 391, 1008-1011; 37 Stat., pp. 154, 952; 38 Stat., pp. 531, 906; 39 Stat., pp. 692, 1020; 40 Stat., p. 931; 41 Stat., p. 849).

By the act, approved March 2, 1911, making appropriations for the District of Columbia for the fiscal year ending June 30, 1912, and for other purposes (36 Stat., pp. 1010,

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1011), it is made the duty of each gaslight company to erect and maintain such street lamps as the Commissioners of the District of Columbia may direct, including lighting and extinguishing of lamps, etc., and failure or refusal in this respect shall subject such gas company to a penalty of twenty-five dollars for each and every day's failure or refusal so to do. The provisions of this act with respect to lighting streets, avenues, etc., have been re-enacted in all of the annual appropriation acts for the District of Columbia since its passage.

The mains, service pipes, and practically the entire distributing plant, or nearly all of it, are placed in the streets, which are the property of the United States; and if a still greater reduction in the price of the gas furnished for public use were required as the condition of such use of the streets by the company, it is difficult to see upon what theory the plaintiffs could maintain a bill for injunction on any claim that their property was thereby being taken without due process of law. And if such a bill were otherwise maintainable, both the United States and the District of Columbia would be indispensable parties to it (Shields *vs.* Barrow, 17 How., 130; Green *vs.* McIntire, 39 App. D. C., 249, 251).

With respect to the claim that gas was furnished to other consumers at a lower rate than that charged the plaintiffs, paragraph 81 of the act permits a lower charge to a corporation conducting a like business, as, for example, the charge by the Washington Gas Light Company for gas sold by it to the Georgetown Gas Light Company. The propriety of such lower charge is based, not merely on the ground that the purchasing company is entitled to some profit upon the resale of the gas so purchased by it, but more especially upon the

ground that it makes distribution thereof through its own mains, service pipes, plant, and services, maintained by it at great cost to itself, which expense of distribution is a material element in the cost of gas at the burners, for which plaintiffs and persons in like situation are charged.

**The Plaintiffs Without Standing in Court.**

The Public Utilities Act provides three ways by which proceedings may be instituted, namely, (1) by the Commission upon its own initiative (paragraph 38); (2) by a public utility, as in the present case (paragraph 47); and (3) by an interested party upon reasonable complaint against the utility (paragraph 38), whether the matters complained of originate with the utility or grow out of an order of the Commission.

The orders of the Commission which the plaintiffs seek to have set aside were entered in proceedings instituted by the utility after public hearings on the matters referred to in the complaint of the utility.

The fact that the plaintiffs, after due notice as required by law, neither appeared in the hearing before the Public Utilities Commission nor presented to it any of the objections which they now seek to have entertained by the court, is, it is submitted, a further ground incapacitating them from maintaining their bill, and justifying its dismissal. The Public Utilities Act, in both paragraphs 46 and 94, requires the giving of reasonable and proper notice of the hearing to the public utility and to such other interested persons as the Commission shall deem necessary. The bill does not claim any defect or insufficiency in the notice given, or that

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the plaintiffs did not receive it; nor does it in any way indicate, or is it the fact, that the plaintiffs or either of them appeared, either personally or by any representative, before the Commission or in any manner submitted to it the objections, or any of them, now made to granting the increased rate sought, the opportunity to present which objections was and is the sole and only purpose of the requirement of notice contained in the act. The requirement of paragraph 53 of the act, which by the bill is made the basis of the plaintiff's demand for a certified transcript, free of cost to them, of all proceedings had and testimony taken in connection with either of the investigations sought to be reviewed, is, by the terms of the act, to be furnished only, to "any party to such investigation"; while paragraph 67 provides that if, upon appeal to the courts, evidence shall be introduced by the plaintiff differing from that offered before the hearing of the Commission or additional thereto, the Court shall stay proceedings until a copy of such evidence has been furnished the Commission for the purposes of consideration and of an opportunity to alter, modify, amend or rescind the order appealed from. It is, we submit, neither a natural nor a conceivable construction of these provisions of the act that persons interested in the hearing, for that reason required to be given notice thereof, and who are thereupon actually so notified and in effect required to show cause, if they have any, against the proposed increase in rates, may fail to do so, permit protracted investigations, expensive both to the utility and to the Commission, to be carried on through a protracted hearing and a determination duly arrived at, and then a year or more later, or indeed at any time thereafter,

with no excuse for or explanation of their failure to present their objections to the Commission, cast upon the courts the burden of hearing the application for an increase in rates anew, upon objections made and upon evidence to be offered for the first time before the courts, and with the burden also, upon the Public Utility Commission at the expense of the public, of furnishing transcripts, comprising many hundreds of pages, of the evidence adduced before it, both by the utility and by its own experts and representatives, for use in the court proceedings. In accordance both with reason and legal principles, we submit, the courts thus appealed to will not hear new points, propositions or objections which the parties, with every opportunity therefor, did not present to the lower tribunal, and for which omission they present neither explanation nor excuse.

Since the appellants are neither required nor have undertaken to sue on any behalf but their own, and since no decree in their case is or can be conclusive upon any others of the many thousands of gas consumers in the District, if any and all consumers who have not appeared or taken part in the hearings before the Commission, may nevertheless bring suits in succession to impeach the orders made, and at any distance of time where constitutional questions are involved, the utterly impossible position, for the utility, the Commission and the Courts must be apparent.

### The Alleged Failure of Notice.

The only claim of any want of notice made by the bill relates to Formal Case No. 70, and that claim is (rec. p. 6) "that on December 10, 1918, at the hearing before the Public

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Utilities Commission in Formal Case No. 70, aforesaid, there was entered the appearance of a certain Roscoe F. Walter, in opposition to the proposed increase in gas rates in such case, the same appearing on behalf of himself, and certain others, citizens of Takoma Park, District of Columbia." It is nowhere alleged that the plaintiffs were among the citizens so represented by Mr. Walter, either as attorney or agent, or that the plaintiffs in any respect sought to intervene or object to the proceedings before the Commission. That the omission to identify themselves with Mr. Walter's representation in the matter was not an inadvertence is evidenced by the fact that, after the case had been fully heard and once decided, at which hearing the fact in question was adverted to, the plaintiffs (rec., p. 23), in the amendment to their bill filed July 8, 1919, again omitted to make any claim that they were included among the persons represented by Mr. Walter on the occasion in question. Neither is it charged that full, adequate and sufficient notice was not given of the second hearing in that case, but only that a promise by the secretary, unauthorized by and unknown to the Commission, to give Mr. Walter a personal notice of a later continuation of the hearing, was not fulfilled, he being at the time of the hearing on an official journey to Santa Fe, and not returning to Washington until the month following the promulgation of the order. Not only does the bill fail to allege that Mr. Walter was at that time the attorney or representative of either of the plaintiffs, but it further omits any charge that they or either of them failed to receive due and actual notice of the hearing in question, or that they relied upon, or ever knew of the alleged promise of the

secretary to him, or that they were in any manner misled or prejudiced thereby. The only mention of a secretary contained in the act is the requirement, in paragraph 97, that he take an oath. Paragraph 95 gives to the Commission the power to prescribe the duties of its various officers, clerks and other employes, among which duties prescribed for the secretary it is not pretended was included the duty or authority to undertake on behalf of the Commission to give special notices to individuals.

What effect could be given by an appellate court to an appeal from a judgment or decree below, in any cause, based upon a claim by the appellant, that he had obtained from a clerk of that court a promise to notify him when the case would come on for hearing, that the clerk had failed to give the promised notice, and that, therefore, the judgment or decree appealed from was void as having been rendered without due process and in violation of the constitutional rights of the appellant?

**The Allegation of a Discriminatory and Confiscatory Rate.**

This, perhaps the principal charge of the bill, rests upon the theory that the Public Utilities Act gives the Commission power to fix the rate which shall be paid for gas by the United States and by the District as well as by private consumers, and that the raising of the rate to the private consumer to the extent of fifteen, or twenty, cents per thousand cubic feet above the seventy-five-cent rate theretofore prevailing, without any increase in the rate fixed by Congress to be paid by the United States and the District, is confiscatory and a taking of the plaintiffs' property without due process of law.

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In the plaintiffs' brief this question is argued upon the theory that the failure of the Commission to increase the rate to the Government and the District was because of a ruling by that body that it had no power to do so, and that, therefore, the increase made necessary by the increased cost of labor, materials, and the like was to be imposed wholly upon the private consumers. No such ruling by the Commission is alleged in or made an issue in the cause by the bill, which fact, of itself, would seem to be fatal to the contention.

Eliminating this objection then, the only issue in this connection would be whether an increase, first of fifteen cents and then of twenty cents per thousand cubic feet, to private consumers, with no increase in the Government or District rates, is a taking of the plaintiffs' property without due process or other violation of their constitutional rights.

In Wilcox *vs.* Consolidated Gas Co., 212 U. S., 54, the objection urged in opposition to the rate fixed by the Public Utilities Commission was, not as seems to be contended by the learned counsel for the plaintiffs, at pages 43-4 and 46-8 of their brief, whether a difference of five cents per thousand cubic feet between a municipality and private consumers was discriminatory; but, as shown at pages 35-6 of the report, that, since the Commission was bound to allow a reasonable rate to be charged to the private consumer, and had determined eighty cents per thousand cubic feet to be that rate, its order that the Gas Company should furnish gas to the municipality at seventy-five cents per thousand cubic feet was a requirement that it should sell the gas at less than a reasonable rate, and was for that reason confiscatory and a taking of property without due process of law. The court (p. 54), without making any reference to the amount of the

difference in charge in the case before it, said: "Lastly, it is objected that there is an illegal discrimination as between the city and the consumers individually. We see no discrimination which is illegal, or for which good reasons could not be given." And the plaintiffs' brief (p. 44) concedes that after full investigation, which it is not claimed it did not make, the Commission might be justified in finding that a greater difference than five cents per thousand cubic feet would not be unduly discriminatory.

If the appellants concede that the Commission has authority under the Public Utilities Act, after investigation, to fix different rates for the Government and the private consumers, then it would follow that their bill was properly and necessarily dismissed, because it states no facts, or fact, tending to show that the rates fixed for private consumers by the orders of the Public Utilities Commission are excessive, confiscatory or in any way unreasonable, nor any ground upon which a differential rate of twenty-five cents per thousand feet in favor of the Government, from which the Gas Company enjoys not only its corporate franchise, but the free use of the streets of Washington, the property of the Government, for its mains, service pipes and other equipment, is open to legal or just exception.

If the company were required by Congress to remove its mains, service pipes, street boxes, and other plant construction from their present situs in and under the streets and public spaces of the city and to locate them upon or under lands now in private ownership, to be acquired by contract or condemnation on payment of due compensation, could the plaintiffs successfully maintain in the courts that the increased cost of gas to them which would result from the re-

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quirement was a taking of their property without due process or was otherwise in violation of their constitutional rights? To do so would be to rule that the Government owes it to the plaintiffs, as a right conferred upon them by the Constitution, to permit the streets to be used by the Gas Company for the purpose of its distribution plant, in order to cheapen the cost of gas to them.

**The Claim That the Public Utilities Act Confers Upon the Commission Authority to Determine the Rate to be Paid by the Government and the District.**

If the foregoing propositions, or any of them, are well taken, the question whether the Public Utilities Commission is authorized by the act creating it to prescribe the rates which the Government and the District must pay for gas is immaterial to the decision of this case.

If all those propositions should be determined adversely to the appellees, the bill must nevertheless be dismissed unless the Commission possesses that power.

In the first place, as noted above, no such question is raised by the bill. It contains no such allegation, nor does it allege that the order of the Commission appealed from was not the result of a full investigation by it of the entire subject, or that its conclusion from that investigation was not that a rate of seventy cents to the Government and ninety-five cents to the private consumers would not be, under all the circumstances of the case, a fair, just, and non-discriminatory rate.

We are quite willing, however, to assume for present purposes that this question is before the court for decision. It is one of great public importance, and it is to the interest of the

Commission, the utility, the courts, and the public that, if there is any reasonable doubt upon the subject, it should be set at rest. But, since the United States and the District are vitally interested in this decision, and since no decree establishing the power can be made without necessarily and seriously affecting their interests, the bill must in any case have been amended for the sake of bringing them before the court, as indispensable parties (Shields *vs.* Barrow, 17 How., 130; Green *vs.* McIntire, 39 App. D. C., 249, 251, above cited).

Assuming these obstacles to have been cured, or out of the way, the contention on behalf of the plaintiffs that the Public Utilities Act confers upon the Commission the authority in question appears from their brief to be based laregly, if not wholly, not merely on words spoken in debate of the measure when on its passage through one of the houses of Congress, which the Supreme Court of the United States holds to be inadmissible (United States *vs.* Freight Association, 166 U. S., 290, 317-18), but even upon remarks attributed, in segregated form, to counsel for the utility before the Senate Committee, and even before the Public Utilities Commission itself.

The history of the passage of the act, which has been held admissible for consideration in the construction of statutes, negatives the construction contended for, even as that history is given by the plaintiffs in their brief. It is as follows:

> "Section 6 of the act of September 1, 1916, making appropriations for the expenses of the District for the fiscal year ending June 30, 1917 (39 Stat., 716), was as it left the House in the following form:
>
> " 'SEC. 6. That hereafter no part of any money appropriated by this or any other act shall be used for

> the payment to the Washington Gas Light Company or the Georgetown Gas Light Company for any gas furnished by said companies for use in any of the public buildings of the United States or of the District of Columbia at a rate in excess of seventy cents per thousand (1,000) cubic feet.'"

According to the plaintiffs' brief, though not otherwise in the case, counsel for the Gas Company, before the Senate Committee, objected to the section, and contended that the rate to be paid by the United States and the District should be left to determination by the Public Utilities Commission under the act, which view was accepted by that Committee, and section 6 stricken from the bill as reported by it to the Senate.

The Committee's amendment of the bill (Plaintiffs' Brief, pp. 28-34), by eliminating the section in question, was not concurred in by the Senate, whereupon Senator Norris moved that the section, as restored, be amended by the addition of a distinct and separate paragraph, dealing with a subject not embraced in it as it came from the House, namely, the rates to be charged to private consumers, which amendment prevailed and was accepted by the House, so that section 6 as finally enacted reads as follows:

> "SEC. 6. That hereafter no part of any money appropriated by this or any other act shall be used for the payment to the Washington Gas Light Company or the Georgetown Gas Light Company for any gas furnished by said companies for use in any of the public buildings of the United States or the District of Columbia at a rate in excess of seventy cents per one thousand cubic feet.

"On and after the first day of October, nineteen hundred and sixteen, the Washington Gas Light Company shall not charge or collect for gas furnished a private consumer in any part of the District of Columbia a rate in excess of seventy-five cents per one thousand cubic feet of gas so furnished: *Provided,* That if a consumer of gas other than the Government or the District of Columbia shall not pay monthly any gas bill within ten days after the same shall have been presented, said gas company may charge and collect from any such consumer so failing to pay said gas bill as aforesaid 10 cents additional for each one thousand cubic feet of gas represented by said bill: *And provided further,* That nothing herein contained shall be construed as limiting or taking away any of the powers now vested by law in the Public Utilities Commission of the District of Columbia."

In other words, (*a*) the Senate Committee proposed to amend the bill as it came from the House by striking paragraph 6 from the bill, for the purpose of leaving the determination of the gas rate to be paid by the United States and the District to the Public Utilities Commission; (*b*) the Senate rejected the amendment and restored section 6, thus declining to leave to the Commission the fixing of the Government and municipal rate, and fixing that rate absolutely by statutory enactment; whereupon (*c*) an additional separate paragraph relating to the rates to be charged, not to the Government nor to the District, but to private consumers exclusively, was added by amendment, which separate paragraph provided that nothing contained in it should be construed as limiting or taking away the powers vested by law in the Commission. It is impossible to hold that, after re-

fusing absolutely to leave to the Commission any power to increase or change the seventy-cent rate to the United States and this District, the Senate intended in dealing with a new subject, namely, the rate to be charged private consumers, to recede from its position and refer the entire question of rates, public and private, to the Commission.

It is further to be noted that by the act of February 21, 1871 (16 Stat. at Large, p. 427), applied to the present form of the District Government by the act of June 20, 1874 (18 Stat. at Large, 116), the Commissioners are forbidden "to make contracts to bind said District to the payment of any sums of money except in pursuance of appropriations made by law, and not until said appropriations shall have been made." If the Commission had assumed to contract with the Gas Company to furnish gas to the public buildings and to street and park lamps at a rate in excess of those established by the appropriation acts, it cannot be open to discussion that their act in doing so would have been, not only in violation of section 6 of the act of September 1, 1916, but of the standing statutory enactment restricting their powers in that regard, in force for nearly half a century. It is perhaps, not remarkable that, under these facts and circumstances attending the enactment of the District Appropriation Act of September 1, 1916, and in view of the act of 1871 above cited, the company's counsel admitted (Plaintiffs' Brief, p. 27) that reflection had convinced them that the Commission had not power to regulate or fix the prices paid by the Government, and that what the Government would pay was fixed by its appropriation acts.

And further the prescribing by Congress, year by year, subsequently as well as prior to the Public Utilities Act, and

subsequently as well as prior to the act of 1916, including the Senate amendment of that act, which subsequent acts as well as the prior ones prescribed unequivocally the rate to be paid per lamp, both constitute legislation *in pari materia* with the Public Utilities Act and the act of 1916, and are irreconcilable with the contention that by either of the last named acts Congress intended the prescribing by the Public Utilities Commission of the rates for gas to be paid by the United States or the District of Columbia; and no one of these subsequent acts contains provisions which could by any possibility be construed as subordinating the rates prescribed by them to be paid to such rates as the Public Utilities Commission might ordain.

It is, therefore, respectfully submitted that there was no error in the decree of the Supreme Court of the District of Columbia dismissing the plaintiffs' bill, or by the Court of Appeals of the District of Columbia in affirming the same, and the same should be affirmed by this court.

Respectfully submitted,

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